

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
2010 Quadrennial Review – Review of the)	MB Docket No. 09-182
Commission’s Broadcast Ownership Rules and)	
Other Rules Adopted Pursuant to Section 202)	
of the Telecommunications Act of 1996)	
)	
Promoting Diversification of Ownership)	MB Docket No. 07-294
In the Broadcasting Services)	

REPLY COMMENTS OF FREE PRESS

As the Commission noted when it sought comment on its recent commercial broadcast stations ownership report,¹ women and people of color continue to hold broadcast licenses “in disproportionately small numbers.”² Submissions from Free Press and from other participants in this latest cycle uniformly recognized this persistent disparity; and Free Press’s analysis of data for full-power television stations demonstrated that the situation is getting worse, not better.

The question remains what the Commission is to do about this situation. Whatever proactive steps and remedies the Commission may undertake after the conclusion of future studies, allowing more consolidation in the present is not the right answer. The report’s release (and this abbreviated round of comments on it) neither changes the fact that media concentration harms ownership diversity, nor relieves the Commission of its obligation to understand those harms *before* making rule changes reportedly under consideration in the item on circulation.

¹ *In the Matter of 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 09-182, 07-294, Report on Ownership of Commercial Broadcast Stations, DA 12-1667 (rel. Nov. 14 2012) (*Form 323 Summary Report*).

² *Commission Seeks Comment on Broadcast Ownership Report*, MB Docket Nos. 09-182, 07-294, Public Notice, DA 12-1946 (rel. Dec. 3, 2012).

When it rejected previous attempts to loosen these very same rules, the Third Circuit Court of Appeals required the Commission to assess the impact of its ownership rules on those “small numbers” for diverse ownership. As the court made abundantly clear, the Commission must understand the effect that revising or relaxing its rules will have before it plunges ahead with such changes.³ To date, there is no indication that the Commission has satisfied that requirement or conducted a reasoned analysis of the likely impact of its rule changes on diversity of ownership. As a result, the majority of commenters reiterated the need for further Commission action and consideration prior to the release of any final order in these dockets.

In this reply, we summarize key points made by parties urging the Commission not to go forward with contemplated rule changes on the basis of the current record in this proceeding. We also address in brief erroneous conclusions and arguments made in the initial comments of the Newspaper Association of America (NAA), the National Association of Broadcasters (NAB), and the National Association of Media Brokers (NAMB) – each of which drew improper conclusions from the *Form 323 Summary Report* or made unsupported assertions about the effect of the Commission’s contemplated changes to the cross-ownership rules.

I. Public Interest Groups, Civil Rights Organizations, and Diverse Broadcasters’ Representatives Demonstrated the Problems with the Commission’s Present Course

The initial comments on the *Form 323 Summary Report* submitted by Free Press and other commenters resoundingly reaffirmed three principles already apparent in the record, even

³ See *Prometheus Radio Project v. FCC*, 652 F.3d 431, 471-72 (3d Cir. 2011) (*Prometheus II*) (“Despite our prior remand requiring the Commission to consider the effect of its rules on minority and female ownership, and anticipating a workable SDB definition well before this rulemaking was completed, the Commission has in large part punted yet again on this important issue.”). The *Prometheus II* ruling emphasized that, because “ownership diversity is an important aspect of the overall media ownership regulatory framework,” the court fully expected “that the actions required on remand should be completed *within the course of* the Commission’s 2010 Quadrennial Review of its media ownership rules.” See *id.* at 472 (emphasis added).

before that report was released: (1) broadcast ownership levels among women and people of color are appallingly low; (2) historical data and econometric analysis suggest that media concentration keeps those numbers low; and (3) the Commission therefore cannot allow more consolidation to occur while ignoring its negative impact on ownership diversity – not, at least, if the agency wishes to serve its own diversity mandate and also to satisfy the Third Circuit.

In our initial comments, Free Press updated the Commission’s 2011 ownership data for full-power television station licensees and corrected a few minor errors in the *Form 323 Summary Report*.⁴ With or without accounting for these corrections, however, all parties acknowledged the disproportionately low ownership figures for women and for members of racial and ethnic minority populations. The Leadership Conference on Civil and Human Rights led a filing from several national civil rights groups that described the ownership diversity crisis that the Commission’s newly released statistics depict.⁵ Diversity and Competition Supporters that joined the group’s supplemental filing likewise noted that they “remain[] appalled at the persistently low numbers of minority and women commercial broadcast stations and station owners.”⁶ Media Alliance asserted that “ownership of the limited public resource of broadcast

⁴ See Comments of Free Press, MB Docket Nos. 09-182, 07-294, at 13-16 (filed Dec. 21, 2012) (Free Press Form 323 Comments). In our initial comments, we noted that the corrected and updated ownership data showed a 74 percent decline since 2006 in the number of full-power television stations licensed to African Americans. See *id.* at 16. Unfortunately, we incorrectly suggested in the summary section of those comments that the decline was 76 percent, rather than 74 percent. The correct figure is in fact 74 percent, based on a loss of 14 out of 19 stations licensed to African Americans in the past six years.

⁵ Comments of the American Civil Liberties Union, Asian American Justice Center, Common Cause, Communications Workers of America, Leadership Conference on Civil and Human Rights, National Council of La Raza, National Consumer Law Center, National Hispanic Media Coalition, National Organization for Women Foundation, National Urban League, NAACP, and United Church of Christ OC Inc., MB Docket No. 09-182, at 2 (filed Dec. 26, 2012) (Leadership Conference Comments).

⁶ Further Comments of the Diversity and Competition Supporters, MB Docket Nos. 09-182, 07-294, at 3 (filed Dec. 26, 2012).

outlets remain[s] disproportionately out of the hands of women, African-Americans, Latinos, Asian-Americans and Native Americans.”⁷

Comments filed by the Institute for Public Representation, on behalf of clients including UCC, NOW, CWA, Common Cause, the Benton Foundation, Prometheus Radio Project, Media Alliance, and Media Council Hawai’i, reported that women and people of color “control only a tiny fraction” of broadcast licenses and own broadcast properties in numbers trailing far behind these demographic groups’ representation in the U.S. population.⁸ The National Association of Black Owned Broadcasters (NABOB) agreed, documenting the decrease in ownership of broadcast properties by African Americans since 1995, and contrasting the “miniscule number of broadcast stations” owned by African Americans to their “percentage of the population.”⁹

Many of the same commenters identified local and national media market concentration over the past two decades as a cause of these miniscule percentages. As Free Press acknowledged in our initial comments, it is true that there are myriad factors contributing to the abysmal state of diverse ownership, including but not limited to institutional discrimination in financing and access to capital and deals. However, we noted that market consolidation is chief among these factors, and even exacerbates the other barriers.¹⁰ Arriving at the same conclusion – and indeed, the only one supported by the record in this proceeding – NABOB described the pressure that consolidation since the mid-1990s has placed on diverse owners and explained that

⁷ Comments of Media Alliance, MB Docket No. 09-182, at 1 (filed Dec. 26, 2012).

⁸ Comments of Office of Communication of the United Church of Christ, Inc. (“UCC”), Media Alliance, National Organization for Women Foundation, Communications Workers of America, Common Cause, Benton Foundation, Media Council Hawai’i, and Prometheus Radio Project, MB Docket Nos. 09-182, 07-294, at 1, 3 (filed Dec. 26, 2012) (UCC *et al.* Comments).

⁹ Comments of the National Association of Black Owned Broadcasters, Inc., MB Docket Nos. 09-182, 07-294, at 6-7 (filed Dec. 26, 2012) (NABOB Comments).

¹⁰ See Free Press Form 323 Comments at 5, 21.

“[a]ny relaxation of any of the Commission's ownership rules will further the ongoing precipitous decline in minority broadcast ownership.”¹¹

In light of these shockingly low levels of ownership diversity, and the evidence that further relaxation of media ownership rules will likely drive those numbers down even more, several commenters stressed that the Commission cannot adopt any changes to its cross-ownership rules at this time without violating the court's instructions in *Prometheus II*. For example, National Hispanic Media Coalition (NHMC) documented the Commission's failures to assess the impact of its proposed rule changes in the prior two quadrennial review orders subsequently overturned by the Third Circuit. NHMC argued forcefully that “[m]oving forward while failing to complete this process will almost assuredly result in the FCC being vacated and remanded for the third straight time by the same Third Circuit panel.”¹²

NABOB concurred, noting that the *Prometheus II* decision requires the Commission to refrain from changing any of its media ownership rules until it has “determined the impact of any such changes on minority ownership.”¹³ Leadership Conference stated in no uncertain terms that “[t]he Commission should not move ahead with any changes until a credible, objective and data-based analysis of the impact of such changes on ownership by women and people of color is completed.”¹⁴ And UCC *et al.* reminded the Commission of the court's instruction to “assess the effects of retaining, modifying or repealing its existing ownership limits on station ownership by minorities and women” prior to changing those rules.¹⁵

¹¹ NABOB Comments at 8; *see also* UCC *et al.* Comments at 15 n.40. (“[A]s markets consolidate, ownership by underrepresented groups decreases.”).

¹² Comments of National Hispanic Media Coalition (NHMC), MB Docket Nos. 09-182, 07-294, at 7 (filed Dec. 26, 2012) (NHMC Comments).

¹³ NABOB Comments at 8.

¹⁴ Leadership Conference Comments at 1.

¹⁵ UCC *et al.* Comments at 8.

For all of these reasons, the Commission cannot act to relax its cross-ownership rules at this time, because such action would certainly run afoul of the *Prometheus II* mandate and also result in a “disastrous decision with potentially long-term effects on ownership diversity.”¹⁶

II. The Few Proponents of Relaxing Ownership Rules That Commented on the Data Relied on Improper Conclusions and Unfounded Assertions to Justify Proposed Rule Changes

Only a handful of commenters in the initial round argued in favor of relaxing cross-ownership rules, questioning the need for what they characterized as “overly restrictive ownership limits.”¹⁷ Yet the few arguments that the NAA, NAB, and the National Association of Media Brokers advanced in support of their claims were baseless, devoid of evidentiary support, or both. They ignored the Commission’s own admonition that some of its data is incomplete and thus unreliable for purposes of trend analysis; and they mischaracterized both the historical impact of relaxing media ownership rules and the realities of how large media conglomerates behave in the marketplace.

To begin, the Newspaper Association of America severely downplayed the likely impact of the Commission’s proposed rule changes in light of the *Form 323 Summary Report* data. NAA asserted that only two “minority-owned full-power television stations,” which it did not identify, would be potential targets for acquisition under a revised newspaper-TV cross-ownership rule.¹⁸ According to the NAA, newspapers categorically would not seek to buy any other minority-owned television stations, such as those that may broadcast in a foreign language or air mainly religious content. Based on this unsupported assumption, NAA posited that relaxation of the cross-ownership rule would not lead to a reduction in ownership diversity.

¹⁶ NHMC Comments at 7.

¹⁷ Comments of the National Association of Broadcasters, MB Docket Nos. 09-182, 07-294, at 9 (filed Dec. 20, 2012) (NAB Comments).

¹⁸ See Supplemental Comments of the Newspaper Association of America, MB Docket Nos. 09-182, 07-294, at 4 (filed Dec. 26, 2012) (NAA Comments).

There are several problems with the NAA's conclusion, which minimizes both the direct and indirect impacts of cross-ownership and consolidation. Free Press's unrefuted studies demonstrate both that concentration generally tends to crowd out diversity and that previous rounds of consolidation based on specific policy changes saw the exit of diverse owners. In *Out of the Picture 2007*, for example, Free Press's research described the relationship between historical relaxation of media ownership rules and the subsequent decline in ownership by people of color.¹⁹ In *Off the Dial*, we compiled data on female and minority ownership of full-power commercial broadcast radio stations, and performed similar analyses of consolidation's impact.²⁰ Both studies illustrated that the level of consolidation in the market is linked to the level of diverse ownership in those markets, and that female- and minority-owned stations thrive in markets that are less concentrated.²¹

Both sets of studies also recognized that the prime factors influencing female and minority ownership are media market concentration, access to capital and equity, and access to deals. As markets become more concentrated, however, the cost of owning stations and the economies of scale needed to run them are artificially inflated to levels only large conglomerates can afford.²² Consolidation thus diminishes the ability of small businesses access capital; to acquire and retain stations; and to compete for both advertising and programming contracts. Moreover, diverse owners are far more likely fall into the category of small businesses or licensees that own a single broadcast station or a small number of stations.²³

¹⁹ See S. Derek Turner and Mark Cooper, *Out of the Picture 2007: Minority and Female TV Station Ownership in the United States*, Free Press, at 23-25 (2007) (*Out of the Picture 2007*).

²⁰ S. Derek Turner, *Off the Dial: Female and Minority Radio Station Ownership in the United States*, Free Press (2007) (*Off the Dial*).

²¹ See *Out of the Picture 2007* at 26; *Off the Dial* at 7.

²² See, e.g., *Off the Dial* at 56; *Out of the Picture 2007* at 29.

²³ See, e.g., *Out of the Picture 2007* at 27-29.

NABOB attested to these types of disadvantages in its comments, concluding that newspaper-broadcast combinations would allow conglomerates to combine sales forces and wield a disproportionate influence over advertisers.²⁴ The likely result would be immense pressure for smaller owners to exit and sell their stations to larger chains, and greater barriers for any woman or person of color attempting to enter (or re-enter) the broadcast market.

Furthermore, NAA's claim that relaxation of the cross-ownership rule simply would not lead to a reduction in minority broadcast ownership²⁵ is inaccurate on its face, as it contradicts NAA's own speculation about the likely direct impact on current licensees. NAA suggested that only two minority-owned stations could foreseeably be sold to a newspaper in the same market. It follows that if those stations were sold, there would be a reduction in minority broadcast ownership in those markets. Given the dismal levels of diverse ownership, relaxation of the rules would have a relatively large and disproportionate impact on diversity *even if* only those two stations sold. We cannot afford to lose even two stations, especially if they are the only two stations owned by people of color that regularly broadcast local news as NAA claims.

²⁴ See NABOB Comments at 10-11; *id.* at 11 n.26 (describing the still more daunting disadvantages that small-station group television licenses face, compared even to the considerable disadvantages faced by radio licensees). NABOB's presentations, along with all of Free Press's prior research, flatly contradict NAB's claim that there is no evidence linking structural ownership rules to diversity. See NAB Comments at 9. Setting aside NAB's odd phrasing of its brief argument on this point, our earlier studies definitively show that diversity of ownership is less likely in the wake of policy changes that allow increased media consolidation.

²⁵ NAA Comments at 4. NAA sought refuge in the initial comments of the Diversity and Competition Supporters, filed last March, to suggest that civil rights groups do not oppose relaxation of cross-ownership rules. But NAA conveniently ignored the fact that several leading civil rights groups that signed onto the March 2012 DCS filing have since clarified their positions regarding the need for further study of the "as-applied" impact of any such rule changes. See Leadership Conference Comments at 1; *see also* Letter from National Urban League, National Council of La Raza, Asian American Justice Center, and NAACP, to Chairman Julius Genachowski, MB Docket No. 09-182, at 1 (filed Dec. 6, 2012) (clarifying that these organizations "*do not* support the relaxation of the newspaper/broadcast cross-media ownership rule" absent heretofore unseen confirmation that such relaxation "*would not diminish minority ownership*") (emphases in original).

Finally, NAA's suggestion that its members will not target other television stations licensed to people of color is speculative and unsupported by any evidence. Stations that already produce news might be the primary acquisition targets, but there are benefits to be derived from buying any station – even if it does not currently possess a news-gathering operation. Television station affiliations and corresponding news capacity can change over time, and television licenses have a value that is only likely to increase in the run-up to the incentive auction.

NAB and NAMB also lacked sound evidence for claims that certain ownership statistics are improving already. Both suggested that the *Form 323 Summary Report* shows modest increases in broadcast ownership levels for women and people of color in certain services.²⁶ To reach this conclusion, however, NAB and NAMB relied on data that the Commission itself deemed potentially unreliable. In fact, the Commission warned against carrying out the exact sort of trend analyses that NAB and NAMB performed, based in large part on the low compliance rates for broadcasters in the 2009 reporting period.²⁷ The lower number of filers in 2009 makes it likely that some of the apparent increases in diverse ownership are not real.²⁸

What's more, as we observed in our initial comments, there were several immediately apparent errors in the Commission's tallies. For example, there were several missing stations, stations improperly identified as minority-owned, and stations that were counted despite having

²⁶ See NAB Comments at 2-7; Comments of the National Association of Media Brokers, MB Docket Nos. 09-182, 07-294, at 4 (filed Dec. 21, 2012).

²⁷ See *Form 323 Summary Report* at 5 n.10. ("While this section and the tables provide a basis for trend analysis over the biennial reporting periods from 2009 to 2011, several factors counsel caution in such analysis.... Changes in gender, ethnicity, and race of the owners of stations between 2009 and 2011...could therefore be somewhat misleading because of [] missing 2009 data.").

²⁸ See UCC *et al.* Comments at 11-12 ("[T]he fact that over 204 stations (15%) are missing from the 2009 full power television ownership data calls into doubt whether the apparent increases in station ownership by Hispanic/Latinos and American Indian/Alaska Natives are real.").

been sold or lost either before or after the 2011 ownership reports were filed. An accurate accounting is a prerequisite for a sound trend analysis, and neither NAB nor NAMB had an accurate accounting on which to rely. Far more reliable and instructive are the careful analyses that Free Press has performed across a broader timespan, from our initial study of commercial TV ownership in 2006 through our updated 2012 numbers in our initial comments here.

CONCLUSION

As indicated in our initial comments on the *Form 323 Summary Report*, the Commission has taken a step in the right direction by attempting to gather accurate data on broadcast ownership levels but much work remains. To satisfy the court and its own diversity mandates, the Commission must not only gather raw data but also work to understand how its policies and proposed rule changes impact ownership by women and people of color. The majority of the comments filed in this latest round agreed with our analysis and our conclusions, suggesting that the Commission is no position to justify further consolidation of local broadcast markets on the record in this proceeding.

Respectfully submitted,

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